



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 2, 2003

Ms. Sheri Bryce Dye
Assistant Criminal District Attorney
Bexar County
300 Dolorosa, Suite 4049
San Antonio, Texas 78205-3030

OR2003-6979

Dear Ms Dye:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 188697.

The Bexar County Office of Planning and Resource Management (the "OPRM") received a request for:

- "1. Constable Precincts 1 thru 4 proposed budget request for FY 2002-2003 and FY 2003-2004.
2. Constable Precincts 1 thru 4 adopted budget request for FY 2002-2003 and FY 2003-2004.
3. Constable Precincts 1 thru 4 actual budget request for FY 2002-2003 and FY 2003-2004. Please include table, grade, number of positions, position title and base salary.
4. Constable Precincts 1 thru 4, 'Total authorized positions' for each precinct FY2001-2002, FY 2002-2003 and FY 2003-2004.
5. Constable Precincts 1 thru 4, 'Grant-in-Aid fund' total for each precinct for FY 2001-2002, FY 2002-2003 and FY 2003-2004.
6. Constable Precincts 1 thru 4, 'Cost of lease & rental space for each precinct' for FY 2001-2002, FY 2002-2003 and FY 2003-2004.
7. Constable Precincts 1 thru 4, 'Total amount of budget recommended vehicles and Auto allowances for each precinct for FY 2001-2002, FY 2002-2003 and FY 2003-2004.

8. Constable Precincts 1 thru 4, 'Total amount of funding of LLEBG for FY 2001 thru 2004.'

You state that the requestor has been provided with some responsive information. You indicate that some responsive information does not exist.¹ You claim, however, that the remaining requested information is excepted from disclosure pursuant to sections 552.103 and 552.106 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted information. We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (providing that person may submit comments stating why information should or should not be released).

Initially, we note that most of the submitted information is subject to section 552.022 of the Government Code. Section 552.022(a) provides in pertinent part:

the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

...

(5) all working papers, research material, and information used to estimate the need for or expenditure of public funds or taxes by a governmental body, on completion of the estimate[.]

Gov't Code § 552.022(a)(5). We have marked the submitted information that is subject to section 552.022(a)(5) of the Government Code. This particular information must be released to the requestor, unless it is confidential under other law. Although the OPRM claims that this marked information is excepted from disclosure pursuant to sections 552.103 and 552.106 of the Government Code, we note that these exceptions to disclosure are discretionary exceptions to disclosure under the Public Information Act that do not constitute "other law" for purposes of section 552.022.² Accordingly, we conclude that the OPRM may

¹ We note that it is implicit in several provisions of the Public Information Act (the "Act") that the Act applies only to information already in existence. *See* Gov't Code §§ 552.002, .021, .227, .351. The Act does not require a governmental body to prepare new information in response to a request. *See* Attorney General Opinion H-90 (1973); *see also* Open Records Decision Nos. 572 at 1 (1990), 555 at 1-2 (1990), 452 at 2-3 (1986), 416 at 5 (1984), 342 at 3 (1982), 87 (1975); *Economic Opportunities Dev. Corp. of San Antonio v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App. -San Antonio 1978, writ dismissed). A governmental body must only make a good faith effort to relate a request to information which it holds. *See* Open Records Decision No. 561 at 8 (1990).

² Discretionary exceptions are intended to protect only the interests of the governmental body, as distinct from exceptions which are intended to protect information deemed confidential by law or the interests of third parties. *See, e.g.,* Open Records Decision Nos. 630 at 4 (1994) (governmental body may waive attorney-client privilege, section 552.107(1)), 551 (1990) (statutory predecessor to section 552.103 serves only to protect governmental body's position in litigation and does not itself make information confidential), 473

not withhold any portion of this marked information under sections 552.103 or 552.106 of the Government Code. Consequently, the OPRM must release this marked information to the requestor in its entirety.

We now address your section 552.106 claim with respect to the remaining submitted information. Section 552.106(a) of the Government Code protects a "draft or working paper involved in the preparation of proposed legislation." Gov't Code § 552.106. Section 552.106 ordinarily applies only to persons with a responsibility to prepare information and proposals for a legislative body. *See* Open Records Decision No. 460 (1987). The purpose of section 552.106 is to encourage frank discussion on policy matters between the subordinates or advisors of a legislative body and the members of the legislative body, and therefore, it does not except from disclosure purely factual information. *See id.* at 2. However, a comparison or analysis of factual information prepared to support proposed legislation is within the ambit of section 552.106. *See id.* A proposed budget constitutes a recommendation by its very nature and may be withheld under section 552.106. *See id.*

You state that the county's budget officer is charged with the duty of preparing the county budget, submitting it to the Commissioner's Court, and administering it after its adoption. You further state that the submitted budget requests and proposals were prepared by city constables at the request of the budget officer to help plan future county budget proposals. Finally, you indicate that the submitted draft budget proposals for fiscal year 2003-2004 are not completed and have been shared only with other members of county management. Based on your representations and our review of the remaining submitted information, we conclude that the OPRM may withhold this information pursuant to section 552.106(a) of the Government Code. *See* Open Records Decision No. 460 (1987) (city's proposed budget protected by predecessor provisions to section 552.106(a)).

In summary, the OPRM must release the marked information to the requestor pursuant to section 552.022(a)(5) of the Government Code. The OPRM may withhold the remaining submitted information pursuant to section 552.106 of the Government Code.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the

(1987) (governmental body may waive section 552.111), 522 at 4 (1989) (discretionary exceptions in general).

governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Ronald J. Bounds
Assistant Attorney General
Open Records Division

RJB/lmt

Ref: ID# 188697

Enc. Marked documents

c: Constable Ruben Tejeda
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(w/o enclosures)